

The Applicants respectfully disagree because Claim 31 of the present application is not identical to Claim 1 of the '142 patent and, thus, may be construed differently than Claim 1, resulting in a different scope of protection. Specifically, Claim 31 of the present application recites "said pocket being substantially free of oxygen in response to substantially removing the oxygen from said pocket and introducing one or more gases creating a modified atmosphere within said pocket . . ." Claim 1 of the '142 patent recites "said pocket being substantially free of oxygen solely in response to said pocket being flushed with one or more gases creating a modified atmosphere within said pocket." Likewise, Claim 32 of the present application recites "substantially removing oxygen from said pocket and introducing one or more gases into said pocket to create a modified atmosphere therein . . ." Claim 10 of the '142 patent recites "substantially removing oxygen from said pocket solely by flushing said pocket with one or more gases."

Therefore, the only appropriate double patenting rejection of Claims 31 and 32 is an obviousness-type double patenting rejection. (See MPEP § 804, "statutory . . . double patenting rejection prevents two patents from issuing on the same invention [when the] 'same invention' means identical subject matter.") To obviate any obviousness-type double patenting rejection, the Applicants submit herewith a Terminal Disclaimer in compliance with 37 C.F.R. §§ 1.321(b) and (c), which is signed by an Assistant Secretary of the assignee of record, to overcome any double patenting rejection based on the '142 patent.

Claims 16-27 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-15 of the '142 patent. The Terminal Disclaimer referred to above obviates this obviousness-type double patenting rejection.

Therefore, Claims 16-32 should be in condition for allowance. Accordingly, withdrawal of the double patenting rejection is respectfully requested.

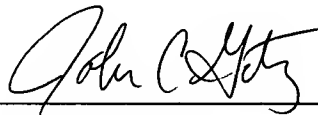
Conclusion

If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at the number indicated below.

Respectfully submitted,

Date: _____

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